



**PUBLIC HEARING  
BEFORE THE GALLATIN COUNTY / BOZEMAN AREA  
BOARD OF ADJUSTMENT**

**DREISESZUN & TAYLOR APPEAL OF  
CODE COMPLIANCE SPECIALIST  
DECISION REGARDING BALDWIN AT  
3051 TEXAS WAY, BOZEMAN, MT**

**FINDINGS, CONCLUSIONS AND  
ORDER**

**SUMMARY OF PROCEEDINGS**

This matter came before the Gallatin County / Bozeman Area Board of Adjustment (BOA) on March 18, 2008 as an appeal from the July 17, 2007 decision of the Gallatin County Code Compliance Specialist that Baldwin does not exceed the scope of a home occupation, and is in compliance with the Gallatin County / Bozeman Area Zoning Regulation (Zoning Regulation) at his residence, 3051 Texas Way, Bozeman, Montana with respect to parking a work vehicle and trailer at his residence, and making approximately two trips per day to enter and leave the premises. Pursuant to Montana Code Annotated (MCA) Section 76-2-223(a) and Section 56.030(A)(1) of the Zoning Regulation, the purpose of this appeal hearing was to determine if the July 17, 2007 decision by the Gallatin County Code Compliance Specialist was made in error, and to reverse or affirm, wholly or partly, or modify the July 17, 2007 decision.

Pursuant to the Zoning Regulation and after legal notice, a public hearing was held before the BOA in Bozeman, Montana on March 18, 2008. Notice of the public hearing was published in the Bozeman Daily Chronicle on March 2 and 16, 2008, sent to adjacent property owners via certified mail, and posted in two locations along Texas Way.

**APPLICABLE REGULATIONS**

1. The Gallatin County / Bozeman Area Zoning Regulation was adopted by the Gallatin County Commission on July 27, 1999, and amended thereafter.
2. Section 12 of the Zoning Regulation regulates permitted, conditional, and accessory uses in the R-S Residential-Suburban Country Estates District (R-S District). The intent of this district is to allow Planned Unit Developments (PUD's) and single-household developments on lots of one

acre. Single-family dwellings are a permitted use. Home occupations and private garages are a permitted accessory use.

3. With the exception of a limited number of conditional uses (such as veterinary uses and day care centers), commercial and industrial uses are prohibited in the R-S District.
4. Section 50.150 of the Zoning Regulation regulates home occupations. A home occupation must be clearly incidental and secondary to the use of the dwelling for residential purposes, and shall not adversely affect the character of the neighborhood.
5. Section 50.150(C) of the Zoning Regulation provides conditions for a home occupation, including:
  - A. Such occupation shall be conducted solely by resident occupant in their residence with not more than one half-time nonresident employee.
  - B. No more than twenty-five (25%) of the gross area of all structures shall be used for such purpose.
  - C. No use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure.
  - D. No home occupation shall cause an increase in the use of any one or more utilities (water, sewer, garbage, etc.) so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood.
  - E. There shall be no outside storage of any kind related to the home occupation.
  - F. The use may increase vehicular traffic flow and parking by no more than one additional vehicle at a time.
  - G. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
6. Section 50.150(F) of the Regulation prohibits uses that have a pronounced tendency to increase beyond the limits permitted for a home occupation, such as auto repair, dental offices, painting of vehicles, trailers, or boats, and contractor's offices, unless no construction activity or storage of materials and/or equipment occurs at the residence.
7. Pursuant to MCA Section 76-2-223(a) and Section 56.030(A)(1) of the Regulation, the BOA shall hear and decide appeals where it is alleged there is an error made by an administrative

official, and it is the BOA's duty to reverse or affirm, wholly or partly, or modify the July 17, 2007 decision by the Code Compliance Specialist.

8. Pursuant to MCA Section 76-2-224, the concurring vote of three members of the BOA is necessary to reverse the July 17, 2007 decision.

### **TESTIMONY**

9. Sandy Taylor, one of the appellants (3001 Texas Way), testified that the decision of the Code Compliance Specialist should be reversed, and that the BOA should issue an order halting Mr. Baldwin's operation for the following reasons:
  - A. Mr. Baldwin's heavy equipment hauling business does not comply with the standards for a home occupation.
  - B. On November 19, 2006, Ms. Taylor sent a letter to the Planning Department with a general inquiry, asking if commercial businesses are allowed, specifically construction related businesses, well drilling businesses, and commercial trucking businesses. County Planner Tim Skop responded on November 21, 2006 stating these uses are prohibited.
  - C. Impacts from Mr. Baldwin's semi truck and lowboy trailer, with over 20 wheels and capable of hauling 30 tons, changes the residential character of the neighborhood. Impacts include vibrations, noise from the diesel engine, and dust from driving down the road.
  - D. The Code Compliance Specialist's decision contradicts a previous decision on Diamond M Drilling, in which she stated there may be no outside storage of any kind. Mr. Baldwin stores his lowboy trailer outside.
  - E. The Code Compliance Specialist's decision sets a precedent, and would allow anyone in an R-S Zone to buy a semi truck and trailer and drive up and down the road.
10. Howard Dreiseszun, one of the appellants (2950 Texas Way), testified that the decision of the Code Compliance Specialist should be reversed for the following reasons:
  - A. Mr. Baldwin's everyday use of a business truck/trailer is different than other resident's personal use of trailers on an occasional basis.
  - B. The Code Compliance Specialist's decision is precedent setting with regards to allowable uses in other R-S zoned neighborhoods.

- C. The home occupation standards do not allow outside storage of any kind. At a minimum, Mr. Baldwin should be required to get a variance to keep his trailer outside, and there should be limits set as to when Mr. Baldwin is allowed to operate his semi-truck and trailer.
  - D. He objects to the noise, dust, and vibrations. The coming and going of the truck/trailer is a problem, not just having the semi truck parked in the shop. He can hear the truck and feel the vibrations from his house.
11. Chuck Baldwin, the alleged violator (3051 Texas Way), described his use of the property and testified that the decision of the Code Compliance Specialist should be affirmed for the following reasons:
- A. Mr. Baldwin's house is the first one on Texas Way (a dead end street), and that he deals with everyone's dust, noise, and vibrations.
  - B. Mr. Baldwin is self employed, and hauls equipment primarily for machinery dealers and the construction industry. He performs some incidental billing from home.
  - C. Since the complaints were filed, Mr. Baldwin makes sure he has a key to drop off equipment at designated sites so that he does not bring any equipment home.
  - D. Mr. Baldwin has brought a forklift home occasionally for personal use.
12. Jolene Baldwin, Chuck Baldwin's spouse (3051 Texas Way), testified that she can count on one hand the number of times her husband Chuck has left before 7:00 am, and that he is home by 10:00 pm. He avoids unnecessary trips back and forth to the residence as they are not a good business practice, and that Chuck does not come home for lunch.
13. Pam Sibary testified that she is a realtor for Century 21 Summit of Bozeman (not a resident of the Aspen Basin Subdivision). She has been a realtor for eight years, and performed two market analyses of Mr. Baldwin's property. Based on her professional experience, Ms. Sibary testified that the type of property Mr. Baldwin owns is very sought after, and that the property value has increased.
14. Mike O'Hara (2829 Texas Way) testified:
- A. He is an electrical contractor and runs his business from home. The Aspen Basin covenants allow home based businesses, as long as the outward appearance is still residential. It is his opinion that a semi truck is not a residential vehicle, because of impacts associated with warm up time, idling, emissions, backing up, hooking up, and street maneuvering.

- B. Mr. O'Hara disagreed with the Code Compliance Specialist's determination that Mr. Baldwin's 30 or 50 ton trailer has the residential or agricultural purposes of horse and boat trailers in the neighborhood. He does not see a residential application. A semi truck does not fit in with the residential character of the neighborhood.
  - C. Mr. O'Hara compared Mr. Baldwin's operation to a request by Town and Country Food Store to locate a supermarket in a residential neighborhood in Bozeman. He stated that the City denied the application partly for impacts that diesel trucks would have on the residential neighborhood.
  - D. Mr. O'Hara testified that Townsend Backhoe is grandfathered with respect to both the Aspen Basin covenants and zoning, and that they are not bound by the same rules. They operate dump trucks, but the comparison is not valid because Townsend Backhoe is grandfathered whereas Mr. Baldwin is not.
- 15. Mike Meyer (6275 Gooch Hill Road) testified that the noise from Mr. Baldwin's trailer impacts him as it drives by his house.
  - 16. Marilyn Maxwell, co-owner of Diamond M Drilling (2840 Texas Way), testified that the Aspen Basin subdivision allowed heavy construction types of business until the Zoning Regulation restricted it, and designated the area residential in 1999.
  - 17. Brooks Emony (2929 Texas Way) testified that he used to operate his business Precision Fencing from his residence, but relocated it elsewhere. He knew the zoning would not allow him to move his business back. The neighborhood used to be business friendly, but the zoning changed that.
  - 18. On rebuttal, Sandy Taylor testified that the Code Compliance Specialist's decision should be overturned because:
    - A. Section 50.150(B) of the Zoning Regulation states that neighbors should not be aware of the existence of a home occupation, and that the neighbors are very aware of Mr. Baldwin's business.
    - B. Section 50.150(A) of the Zoning Regulation States that there shall be no outside storage of any kind. Mr. Baldwin stores his trailer outside.
    - C. The decision was made without any input from the appellants; the Code Compliance Specialist did not ask appellants for pictures, nor consult with them at any time.
  - 19. On rebuttal, Chuck Baldwin testified that it takes him less than five minutes to start up his truck and leave in the morning. He keeps his truck inside so that it doesn't have to idle very long,

and is not visible to others. He has only blocked traffic once when he was stuck in his yard in the winter and had to use chains to get out.

### **FINDINGS OF FACT**

20. Chuck and Jolene Baldwin own and reside on the property at 3051 Texas Way, Bozeman, MT. The 2.46-acre tract is described as Lot 6 of the Aspen Basin subdivision in the N ½, NE ¼, Section 20, T 2 S, R 5 E, P.M.M., Gallatin County. They have lived there for approximately three years.
21. The Baldwin's property is located in the R-S Residential-Suburban Country Estates District of the Gallatin County / Bozeman Area Zoning District.
22. On May 3 and 7, 2007, the Code Compliance Specialist received a complaint from Howard Dreiseszun and Sandy Taylor that Mr. Baldwin operates a semi-tractor with heavy equipment in and out of his property in violation of Section 12 (R-S Zoning) and Section 50.150 (home occupations) of the Zoning Regulation.
23. On June 11, 2007, the Code Compliance Specialist determined that Mr. Baldwin was not in violation of the Zoning Regulation. During a May 30, 2007 inspection the Code Compliance Specialist did not observe any outside storage that would indicate a commercial use in violation of Section 12 and/or Section 50.150 of the Zoning Regulation. Mr. Baldwin stated that he parks his lowboy goose neck trailer outside adjacent to his shop. The Code Compliance Specialist determined that Mr. Baldwin's outside storage of a trailer is not violating the Zoning Regulation because the use is not any different than other neighborhood residents storing horse trailers, flatbed trailers, etc. outside on their property.
24. On June 28, 2008, Sandy Taylor submitted a request for the Code Compliance Specialist to reevaluate the June 11, 2007 decision, stating that this decision changed the residential character of the neighborhood, and that comparing Mr. Baldwin's flatbed trailer to horse trailers used for personal enjoyment is not a valid comparison.
25. The Code Compliance inspected Chuck Baldwin's property for a second time on July 10, 2007, and on July 17, 2007 affirmed the June 11, 2007 decision. In this decision, the Code Compliance Specialist she stated that Mr. Baldwin was complying with the Zoning Regulation, and has not exceeded the scope of a home occupation. As part of that decision, the Code Compliance Specialist determined that the outside appearance of Mr. Baldwin's property is that of a normal residence, not a construction or storage yard.

26. On August 9, 2007, Howard Dreiseszun and Sandy Taylor appealed the July 17, 2007 decision by the Code Compliance Specialist. The appeal was timely.

### **CONCLUSIONS**

27. After considering public testimony and in board discussion, the BOA concluded:
- A. To adopt and incorporate the findings contained in the Code Compliance Specialist's staff report.
  - B. Mr. Baldwin complies with permitted and accessory uses of Section 12 R-S Zoning and Section 50.150(C) Home Occupation standards.
  - C. Future outbuildings and whether they are allowed or not, are not relevant.
  - D. Gallatin County Planner Tim Skop's November 21, 2006 letter to Ms. Taylor is not relevant, as it was not specific in nature, does not make a determination regarding whether Mr. Baldwin is in compliance, and advises Ms. Taylor to contact the Planning Department to address a specific situation.
  - E. Previous conversations the appellants had with Planning Director Greg Sullivan regarding setting precedent are not relevant, as each case is decided on as case by case basis.
  - F. Appellant's objection regarding Mr. Baldwin driving his trailer around is based in tort, in terms of nuisance or violation of privacy rights, and the BOA does not have jurisdiction of that type of complaint.
  - G. The BOA does not have the power to regulate when Mr. Baldwin can go to work, start his truck, not start his truck, or come and go. Doing so would infringe on the Montana constitutional right to work.
  - H. Public testimony regarding a comparison to a Town and Country food store being denied in a residential neighborhood is not applicable, nor persuasive, as every grocery store in town is incredibly busy with tractor trailers and people coming and going to buy groceries.
  - I. The BOA does not have jurisdiction over covenants, and whether covenants track with the zoning regulation is an issue for the district court.
  - J. Item E of the Code Compliance Specialist's rationale for decision in the Staff Report is persuasive with regard to outside storage. Mr. Baldwin's single trailer stored outside, in

and of itself, does not signal a home occupation. The trailer is low profile, and is not visible to the appellants from their houses when it is parked next to Mr. Baldwin's shop. The trailer is minimally visible to residents as they drive on Texas Way. If Mr. Baldwin stored heavy equipment, multiple vehicles, and other equipment outside, then he would be violating the outside storage standard for a home occupation. He does not.

- K. Item H of the Code Compliance Specialist's rationale for decision in the Staff Report is persuasive with regards to existing uses and the nature of the community. The home occupation standards do not prohibit parking a work vehicle at home, nor do they distinguish between size of work vehicles. Mr. Baldwin's presence in the community is not any more or less egregious than any other resident's use in the neighborhood.
- L. The BOA heard conflicting testimony with regards to item H of the Code Compliance Specialist's rationale for decision with regards to noise, dust, and vibrations. The BOA acknowledges that Mr. Baldwin's vehicle likely creates a significant amount of dust, noise, and vibrations compared to a typical work vehicle, and could be offensive to some people. However, the zoning regulation does not define what constitutes an acceptable level of noise/decibel level. Testimony presented shows that the community does not have consensus on noise levels and other impacts. Some residents are bothered by the disturbances Mr. Baldwin creates, others are not. The zoning regulation does not give the BOA clear guidance or recourse.
- M. Mr. Baldwin's business is not a commercial trucking business because he does not employ people that park trucks or operate out of his property.
- N. Pursuant to MCA Section 76-2-223(a) and Section 56.030(A)(1) of the Zoning Regulation, a motion was made by Member Curtis, and seconded by Member Armstrong, that the Code Compliance Specialist was not in error when she found Mr. Baldwin is in compliance with Section 12 and 50.150 of the Zoning Regulation. The BOA unanimously affirmed the Code Compliance Specialist's June 28, 2007 and July 17, 2007 decisions (vote 4:0).

### **DETERMINATION AND ORDER**

The BOA having made and adopted the above findings of fact and conclusions as a part of this determination, and after due deliberation and consideration of all the facts, circumstances, rules, laws



and regulations, and after carefully considering public comment, testimony, documents, exhibits, and submissions in this case enters a determination that the Code Compliance Specialist was not in error and the July 17, 2007 decision is hereby AFFIRMED.

**Gallatin County / Bozeman Area Board of Adjustment**

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Jason Armstrong, Chairman

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Date